

CAUSE NO. PD-1189-15

IN THE COURT OF CRIMINAL APPEALS OF TEXAS FILED
COURT OF CRIMINAL APPEALS
5/30/2018
DEANA WILLIAMSON, CLERK

MAYRA FLORES
Petitioner

V.

THE STATE OF TEXAS
Respondent

MOTION FOR COURT TO RECONSIDER THE DETERMINATION NOT TO
PUBLISH THE OPINION

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Appellant, Mayra Flores, files this motion for court to reconsider the determination not to publish the opinion in this case pursuant to Rule 77.2 of the Texas Rules of Appellate Procedure, and in support, appellate respectfully shows this Court the following:

1. On May 23, 2018, this Court reversed the judgment of the court of appeals and remanded this case to that court for a harm analysis.
2. Appellant's claim on direct appeal challenged the trial court's admission into evidence the audio recordings of her custodial interrogation. Both at

trial and on appeal, the gravamen of appellant's challenge was the absence of some of the requirements under article 38.22, section 3. This Court's opinion reaffirmed its previous holdings that strict compliance with article 38.22, section 3, addressing electronic recordings, is required for audio recordings to be admissible. The Court cited the following four cases to highlight this unretractable rule: *Nonn v. State*, 117 S.W.3d 874, 879 (Tex. Crim. App. 2003); *Nonn v. State*, 41 S.W.3d 677, 679 (Tex. Crim. App. 2001); *Davidson v. State*, 25 S.W.3d 183, 186 (Tex. Crim. App. 2000); and *Woods v. State*, 152 S.W.3d 105, 116 (Tex. Crim. App. 2004).¹ Finally, this Court found that an audio recording that failed to contain thirty minutes of appellant's interrogation was not accurate, and thus, not admissible, which is consistent with the strict requirements of article 38.22, section 3(a)(3).²

3. The importance of this Court making its decision public is a corollary to its observation made in the opinion's footnote:

We certainly can envision other cases involving recordings with *minimal missing portions* in which such recordings properly may be held to be accurate and admissible.³

Just as this Court can envision cases with minimal missing portions in their recordings, also there will be cases with substantial portions missing from their recordings. Moreover, if a substantial portion of a recording is missing, then the

¹ Plurality Opinion, pp.11-12.

² Id. at p. 18.

³ Id. at p. 19, footnote 5.

recording is not accurate, just as this Court found in the present case. Quantifying what amount of missing portion from a recording qualifies as sufficient to be characterized as minimal versus non-minimal is likely a case-by-case, specific inquiry.⁴ This means that this is an issue not only of continuing public interest, but also an issue on which parties, practitioners, and judges need to have guidance to insure strict compliance with article 38.22. This Court's role in shepherding the jurisprudence so that the courts of appeals have a clearer blueprint for rendering justice – specifically when confronted with issues relating to article 38.22 - is best served by publishing this opinion. The occurrence of anomalies with recordings are simply endemic to electronics. Courts of appeal need not grope in darkness, and write inconsistent decisions, when this Court can provide light and a pathway to justice.

WHEREFORE, PREMISES CONSIDERED, the appellant, Mayra Flores, prays that this Honorable Court grant this motion and designate its opinion of May 23, 2018 for publication.

Respectfully submitted,

THE WILKINS LAW FIRM, P. C.

/s/ Ralphaell V. Wilkins

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⁴ Worthy of mentioning, the substance of what is missing from a recording may, in some instances, be more important than the length of time of a recordings' miscue.

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CERTIFICATE OF CONFERENCE

On May 29, 2018, Mr. Wilkins spoke on the telephone with Mr. Daniel McCrory, Esq., counsel for appellee, to discuss the merits of this motion to reconsider decision not to publish opinion. Mr. McCrory graciously expressed his opposition to having the motion granted.

/s/Ralphaell V. Wilkins
Ralphaell V. Wilkins

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served via the electronic filing manager and/or by U. S. certified mail, return receipt requested, and/or faxed this 29th day of May 2018, to the following counsel of record:

Daniel McCrory, Esq.
Harris County District Attorney Office
1201 Franklin Street
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/s/Ralphaell V. Wilkins
Ralphaell V. Wilkins

